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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FIDEL QUINTANILLA, individually) Case No.
and on behalf of all others similarly)
situated,) **CLASS A**

Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**

VS.

PINNACLE RECOVERY, INC.,
Defendant.

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]
3. FAIR DEBT COLLECTION Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*]
4. VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT [CAL. CIV. CODE §1788 ET SEQ.]

DEMAND FOR JURY TRIAL

1
2 Plaintiff FIDEL QUINTANILLA (“Plaintiff”), individually and on behalf of
3 all others similarly situated, alleges the following against Defendant PINNACLE
4 RECOVERY, INC. upon information and belief based upon personal knowledge:

5 **INTRODUCTION**

6 1. Plaintiff’s Class Action Complaint is brought pursuant to the
7 Telephone Consumer Protection Act, 47 U.S.C. 227 et seq. (“TCPA”).

8 2. Plaintiff, individually, and on behalf of all others similarly situated,
9 brings this Complaint for damages, injunctive relief, and any other available legal
10 or equitable remedies, resulting from the illegal actions of Defendant in
11 negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff’s cellular
12 telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon
13 personal knowledge as to himself and his own acts and experiences, and, as to all
14 other matters, upon information and belief, including investigation conducted by
15 his attorneys.

16 3. In addition to Plaintiff’s Class Claims, Plaintiff also brings an action
17 for damages as an individual consumer for Defendant’s violations of the federal
18 Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter
19 “FDCPA”) and the Rosenthal Fair Debt Collection Practices Act, Cal Civ. Code
20 §1788, et seq. (hereinafter “RFDCPA”) which prohibit debt collectors from
21 engaging in abusive, deceptive, and unfair practices.
22

23
24 **JURISDICTION AND VENUE**

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26 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
27 a resident of California, seeks relief on behalf of a Class, which will result in at
28 least one class member belonging to a different state than that of Defendant, a

1 company that does business in the state of California. Plaintiff also seeks up to
2 \$1,500.00 in damages for each call in violation of the TCPA, which, when
3 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
4 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
5 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
6 present, and this Court has jurisdiction.

7 5. Jurisdiction is also proper under 28 U.S.C. § 1331 because this cause
8 of action arises under Federal Law, namely the TCPA and the FDCPA. Plaintiff’s
9 RFDCPA claim is supplemental to the Federal Law claims, and this Court therefore
10 has jurisdiction under 28 U.S.C. § 1367.

11 6. Venue is proper in the United States District Court for the Northern
12 District of California pursuant to 28 U.S.C. 1391(b) because Defendant does
13 business within the State of California and Plaintiff resides within this District.

14 **PARTIES**

15 7. Plaintiff, FIDEL QUINTANILLA (“PLAINTIFF”), is a natural
16 person residing in Santa Clara County in the state of California, and is a
17 “consumer” as defined by the FDCPA, 15 U.S.C. §1692a(3).

18 8. At all relevant times herein, DEFENDANT, PINNACLE
19 RECOVERY, INC. (“DEFENDANT”), was a company engaged, by use of the
20 mails and telephone, in the business of collecting a debt from PLAINTIFF which
21 qualifies as a “debt,” as defined by 15 U.S.C. §1692a(5). DEFENDANT regularly
22 attempts to collect debts alleged to be due another, and therefore is a “debt
23 collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

24 9. Defendants acted through their agents, employees, officers, members,
25 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
26 representatives, and insurers.
27
28

FACTUAL ALLEGATIONS – TCPA

10. Beginning in 2015 and throughout 2016, Defendant contacted Plaintiff on his cellular telephone number ending in -6916, in an effort to collect an alleged debt owed from Plaintiff.

11. In its efforts to collect the alleged debt owed from Plaintiff, Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

12. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

13. Defendant’s calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

14. During all relevant times, Defendant did not possess Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A). Furthermore, Plaintiff orally revoked any and all consent to be contacted using an automated telephone dialing system, to the extent any ever existed. However, Defendant continued to call Plaintiff.

FACTUAL ALLEGATIONS – FDCPA

15. In addition to the facts pled above, at various times prior to the filing of the instant complaint, including within one year preceding the filing of this complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an alleged outstanding debt.

1 16. Beginning in 2015, Plaintiff began receiving numerous calls from
2 Defendant.

3 17. Defendant called Plaintiff multiple times each date between late 2015
4 through August 2016. On several occasions, Plaintiff told Defendant to stop
5 calling him, but Defendant continued to call.

6 18. DEFENDANT'S conduct violated the FDCPA and RFDCPA in
7 multiple ways, including but not limited to:

- 8
- 9 a) Causing a telephone to ring repeatedly or continuously to annoy
10 Plaintiff (Cal. Civ. Code § 1788.11(d));
- 11 b) Communicating, by telephone or in person, with Plaintiff with such
12 frequency as to be unreasonable and to constitute an harassment to
13 Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));
- 14 c) Causing Plaintiffs telephone to ring repeatedly or continuously with
15 intent to harass, annoy or abuse Plaintiff (15 U.S.C. § 1692d(5));
- 16 d) Communicating with Plaintiff at times or places which were known
17 or should have been known to be inconvenient for Plaintiff (15 U.S.C.
18 §1692c(a)(1)); and
- 19 e) Engaging in conduct the natural consequence of which is to harass,
20 oppress, or abuse Plaintiff (15 U.S.C. § 1692d)).

21 19. As a result of the above violations of the FDCPA and RFDCPA,
22 Plaintiff suffered and continues to suffer injury to PLAINTIFF'S feelings, personal
23 humiliation, embarrassment, mental anguish and emotional distress, and
24 DEFENDANT is liable to PLAINTIFF for PLAINTIFF'S actual damages,
25 statutory damages, and costs and attorney's fees.

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CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

21. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

22. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

23. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

24. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff

1 and Class members via their cellular telephones thereby causing Plaintiff and Class
2 members to incur certain charges or reduced telephone time for which Plaintiff and
3 Class members had previously paid by having to retrieve or administer messages
4 left by Defendant during those illegal calls, and invading the privacy of said
5 Plaintiff and Class members.

6 25. Common questions of fact and law exist as to all members of The
7 Class which predominate over any questions affecting only individual members of
8 The Class. These common legal and factual questions, which do not vary between
9 Class members, and which may be determined without reference to the individual
10 circumstances of any Class members, include, but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendant made any collection call (other than a
13 call made for emergency purposes or made with the prior
14 express consent of the called party) to a Class member using
15 any automatic telephone dialing system or any artificial or
16 prerecorded voice to any telephone number assigned to a
17 cellular telephone service;
- 18 b. Whether Plaintiff and the Class members were damages
19 thereby, and the extent of damages for such violation; and
- 20 c. Whether Defendant should be enjoined from engaging in such
21 conduct in the future.

22 26. As a person that received numerous collection calls from Defendant
23 using an automatic telephone dialing system or an artificial or prerecorded voice,
24 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
25 typical of The Class.

26 27. Plaintiff will fairly and adequately protect the interests of the members
27 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
28 class actions.

1 28. A class action is superior to other available methods of fair and
2 efficient adjudication of this controversy, since individual litigation of the claims
3 of all Class members is impracticable. Even if every Class member could afford
4 individual litigation, the court system could not. It would be unduly burdensome
5 to the courts in which individual litigation of numerous issues would proceed.
6 Individualized litigation would also present the potential for varying, inconsistent,
7 or contradictory judgments and would magnify the delay and expense to all parties
8 and to the court system resulting from multiple trials of the same complex factual
9 issues. By contrast, the conduct of this action as a class action presents fewer
10 management difficulties, conserves the resources of the parties and of the court
11 system, and protects the rights of each Class member.

12 29. The prosecution of separate actions by individual Class members
13 would create a risk of adjudications with respect to them that would, as a practical
14 matter, be dispositive of the interests of the other Class members not parties to such
15 adjudications or that would substantially impair or impede the ability of such non-
16 party Class members to protect their interests.

17 30. Defendant has acted or refused to act in respects generally applicable
18 to The Class, thereby making appropriate final and injunctive relief with regard to
19 the members of The Class as a whole.

20 21 **FIRST CAUSE OF ACTION**

22 **Negligent Violations of the Telephone Consumer Protection Act**

23 **47 U.S.C. §227 et seq.**

24 **-Plaintiff and The Class against Defendant-**

25 31. Plaintiff repeats and incorporates by reference into this cause of
26 action the allegations set forth above at Paragraphs 1-30.

27 32. The foregoing acts and omissions of Defendant constitute numerous
28 and multiple negligent violations of the TCPA, including but not limited to each

1 and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

2 33. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et*
3 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
4 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

5 34. Plaintiff and the Class members are also entitled to and seek
6 injunctive relief prohibiting such conduct in the future.

7 **SECOND CAUSE OF ACTION**

8 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
9 **Act**

10 **47 U.S.C. §227 et seq.**

11 **-Plaintiff and The Class against Defendant-**

12 35. Plaintiff repeats and incorporates by reference into this cause of
13 action the allegations set forth above at Paragraphs 1-30.

14 36. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple knowing and/or willful violations of the TCPA, including but not
16 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et*
17 *seq.*

18 37. As a result of Defendant's knowing and/or willful violations of 47
19 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of
20 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
21 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

22 38. Plaintiff and the Class members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

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THIRD CAUSE OF ACTION

Violations of the Federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

-Plaintiff against Defendant-

39. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-30.

40. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

FOURTH CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

-Plaintiff against Defendant-

41. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-37.

42. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation,

pursuant to 47 U.S.C. 227(b)(3)(B).

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Violations of the Federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- A. Actual damages;
- B. Statutory damages for willful and negligent violations;
- C. Costs and reasonable attorney's fees,
- D. For such other and further relief as may be just and proper.

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FOURTH CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- A. Actual damages;
- B. Statutory damages for willful and negligent violations;
- C. Costs and reasonable attorney's fees,
- D. For such other and further relief as may be just and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 12th day of December, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff